

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 21-0009318 CAF**

<b>SHYLLO MICHAELIS,</b>	§	
<b>Complainant</b>	§	
	§	
<b>v.</b>	§	<b>BEFORE THE OFFICE</b>
	§	
<b>JAGUAR LAND ROVER NORTH</b>	§	
<b>AMERICA, LLC,</b>	§	<b>OF</b>
<b>Respondent</b>	§	
	§	
<b>and</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	
<b>USB LEASING LT,</b>	§	
<b>Intervenor</b>	§	

**DECISION AND ORDER**

Shyllo Michaelis (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in her vehicle distributed by Jaguar Land Rover North America, LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warranted defect. Consequently, the Complainant’s vehicle does not qualify for repurchase/replacement or warranty repair.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on November 10, 2021, in Plano, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented herself. The Complainant’s husband, Daniel Michaelis also testified for the Complainant. John Chambless, attorney, represented the Respondent. Brandon Sangster, Customer Satisfaction Senior Technical Specialist, testified for the Respondent. USB Leasing LT (Intervenor) did not participate in the hearing.

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<sup>1</sup> TEX. GOV’T CODE § 2001.051.

## II. Discussion

### A. Applicable Law

#### 1. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.<sup>2</sup> A vehicle qualifies for repurchase or replacement if the respondent cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”<sup>3</sup> In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must currently exist after a “reasonable number of attempts” at repair.<sup>4</sup> In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a written notice of the defect to the respondent, (2) an opportunity to cure by the respondent, and (3) a deadline for filing a Lemon Law complaint.

##### a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life-threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.<sup>5</sup>

##### b. Substantial Impairment of Use or Value

###### i. Impairment of Use

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs use. Under this standard, the factfinder considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle” from the perspective of a reasonable prospective purchaser. For instance, “while a vehicle with a non-functioning air

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<sup>2</sup> TEX. OCC. CODE § 2301.603.

<sup>3</sup> TEX. OCC. CODE § 2301.604(a).

<sup>4</sup> TEX. OCC. CODE § 2301.604(a).

<sup>5</sup> TEX. OCC. CODE § 2301.601(4).

conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”<sup>6</sup>

**ii. Impairment of Value**

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”<sup>7</sup>

**c. Reasonable Number of Repair Attempts**

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>8</sup>

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000

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<sup>6</sup> *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

<sup>7</sup> *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“We find that this interpretation of the standard required for demonstrating substantial impairment is reasonable and consistent with the statute’s plain language which requires a showing of loss in market value. . . . [T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>9</sup>

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>10</sup>

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.<sup>11</sup>

The existence of a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.<sup>12</sup> Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.<sup>13</sup>

#### **d. Other Requirements**

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner, or the Department has provided written notice of the alleged defect or nonconformity to the respondent;<sup>14</sup> (2) the respondent was given an opportunity to cure the defect or

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<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(2).

<sup>10</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>11</sup> TEX. OCC. CODE § 2301.605(c).

<sup>12</sup> *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’”).

<sup>13</sup> *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

<sup>14</sup> 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department’s notice of the complaint to the Respondent satisfies the requirement to provide notice of the defect or nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

nonconformity;<sup>15</sup> and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.<sup>16</sup>

## 2. Warranty Repair Relief

If repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle”; the vehicle owner provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty's expiration; and the owner filed a complaint with the Department specifying the defect.<sup>17</sup> The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”<sup>18</sup>

## 3. Burden of Proof

The law places the burden of proof on the Complainant.<sup>19</sup> The Complainant must prove all facts required for relief by a preponderance of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.<sup>20</sup> Accordingly, the Complainant cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

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<sup>15</sup> TEX. OCC. CODE § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent authorizes a dealer to attempt repair after written notice to the respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); Texas Department of Transportation, *Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2. A respondent forgoes its opportunity to repair by replying to a written notice of defect with a settlement offer instead of arranging a repair attempt. *Id* at 2.

<sup>16</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>17</sup> TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

<sup>18</sup> TEX. OCC. CODE § 2301.603(a).

<sup>19</sup> 43 TEX. ADMIN. CODE § 215.66(d); see *Vance v. My Apartment Steak House, Inc.*, 677 S.W.2d 480, 482 (Tex. 1984) (“[A] civil litigant who asserts an affirmative claim for relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

<sup>20</sup> *E.g.*, *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

#### 4. The Complaint Identifies the Relevant Issues in this Case

The complaint identifies the relevant issues to address in this case.<sup>21</sup> The complaint must state “sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”<sup>22</sup> However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.<sup>23</sup> Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>24</sup> Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.<sup>25</sup>

#### 5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.<sup>26</sup> Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle’s failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts

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<sup>21</sup> “In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.” TEX. GOV’T CODE § 2001.051; “Notice of a hearing in a contested case must include . . . either: (A) a short, plain statement of the factual matters asserted; or (B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.” TEX. GOV’T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

<sup>22</sup> 43 TEX. ADMIN. CODE § 215.202(a)(3).

<sup>23</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

<sup>24</sup> *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

<sup>25</sup> *See* TEX. GOV’T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

<sup>26</sup> TEX. OCC. CODE § 2301.604.

or similar written documents).<sup>27</sup> However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”<sup>28</sup>

### **B. Summary of Complainant’s Evidence and Arguments**

On June 14, 2019, the Complainant, leased a new 2019 Land Rover Range Rover Velar from Autobahn Imports, a franchised dealer of the Respondent, in Fort Worth, Texas. The vehicle had 4,641 miles on the odometer at the lease date. USB Leasing LT is the current lessor. The vehicle’s limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.

On or about April 6, 2021, the Complainant provided a written notice of defect to the Respondent. On April 6, 2021, the Complainant filed a complaint with the Department alleging that electrical and software issues would cause the battery to die. Additionally, the climate control would not work, the sunroof would not open, and the vehicle would occasionally completely die.

In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

<b>Date</b>	<b>Miles</b>	<b>Issue</b>
12/24/2019	6,711	Battery was dead.
12/23/2020	12,193	Battery too low.
02/26/2021	13,319	Battery is too weak to unlock the doors.
03/16/2021	13,489	Sunroof will not open. HVAC will not work.
03/24/2021	13,495	HVAC will not turn on.
04/06/2021	13,566	The temperature controls will not work intermittently. Sunroof controls will not work. No AC.
06/15/2021	14,873	Battery too low. Vehicle is completely dead.

The Complainant testified that she was the primary driver of the vehicle. She stated that she drove the vehicle about once every 10 days for 10 to 15 miles at a time consisting of both highway and city miles. She believed that electrical and battery issues caused all the problems.

The Complainant explained that she first experienced problems with the dead battery on December 24, 2019. She described that her battery died and the vehicle needed a jump start to take the vehicle into the dealership. The dealer sent a service vehicle to jump start the vehicle and then

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<sup>27</sup> 43 TEX. ADMIN. CODE § 215.209(a).

<sup>28</sup> 43 TEX. ADMIN. CODE § 215.208(b)(1).

replaced the battery. The Complainant recalled that the battery most recently died on June 15, 2021. She summarized that she had seven trips to the dealer for various issues and four of the trips related to battery issues and the battery replacement.

The Complainant testified that she first noticed the climate control malfunction on March 16, 2021. Mr. Michaelis explained that when he pressed that AC (air conditioning) button, the air would come on for 10-12 seconds and then shut off. He further explained that this would occur on subsequent presses of the AC button. The Complainant added that they tried to troubleshoot the problem and found that the sunroof would not work either. She most recently noticed the climate control issue on April 6, 2021. Mr. Michaelis explained that the issue did not reoccur since then. The Complainant confirmed that the sunroof issue occurred at the same time as the climate control issue. She believed that the sunroof issue was resolved. She added that she did not have issues with the sunroof since picking up the vehicle from the dealer after the April 6, 2021, repair visit.

The Complainant described when the car went completely dead as there being no lights or any power and needing to use the manual key to open the door. She stated that she first noticed this issue on December 24, 2019. She confirmed that this issue coincided the battery going dead. She did explain that one of the four times when the battery died she was still able to access the vehicle electronically with the key fob but she was still not able to start the car. She testified that the most recent issue with the vehicle being completely dead was June 15, 2021.

The Complainant added that the front parking sensors are not working properly and will not sound even when very close to a wall. Respondent objected to the issue because it was not in the complaint.

The Complainant stated that the vehicle was out of service for a total of 48 days. She explained that she was not provided a loaner because either the dealer did not have one available or they did not need it at the time. Complainant expressed a preference for repurchase of the vehicle.

On cross-examination, The Complainant clarified that she believed that the completely dead issue was a battery issue. She also stated that she believed the sunroof and AC issue were resolved. She further confirmed that the battery issue has not occurred since June (2021). The

Complainant reiterated that the vehicle often sat for weeks at a time without being driven. She answered that the longest amount of time that the vehicle sat idle was for three weeks.

The Complainant expressed a lack of confidence in the vehicle for long trips and she had only taken it on one trip to Houston. She confirmed that the vehicle had not been in a wreck and had no body work done.

### **C. Inspection**

The vehicle's odometer displayed 16,632 miles at the start of the inspection. The AC worked as designed during the inspection. The sunroof opened and closed properly with no issues observed. The vehicle otherwise appeared to operate normally.

### **D. Summary of Respondent's Evidence and Arguments**

Brandon Sangster, Customer Satisfaction Senior Technical Specialist, testified for the Respondent. Mr. Sangster recounted that he first saw the Complainants vehicle in the first week of October 2021. He explained that he looked at the DTC (diagnostic trouble code) codes on the vehicle and none of them concerned him. He confirmed that no codes related to the AC, the sunroof, or the battery issue.

Mr. Sangster explained that the AC and the sunroof issue were related. He elaborated that the dealership found a loose pin in the system. He described that the AC system used data from the sunroof in its operation so the loose pin would affect both systems. He acknowledged that the loose pin could have become evident after two years. He pointed out that the dealership had repaired the loose pin. He expressed confidence that the repair to the loose pin resolved the AC and sunroof issues.

Mr. Sangster explained that the gateway module would stay active when a third-party scanner connects to the vehicle. Mr. Sangster stated that he performed three tests. He first performed a parasitic draw test. He explained that he used a PicoScope and simulated the doors being closed and locked. The test showed a slight drain (300 to 500 mA) that was normal for any computer equipped vehicle. He testified that he next plugged a third-party scanner into the vehicle. He further testified that he removed the scanner and performed the parasitic test again. He found a draw of five to six amps (5,000 to 6,000 mA), which was higher than it should have been. He commented that extended periods of not driving would make the battery drain more obvious, since

the alternator charges the battery while driving. He then testified that he disconnected the battery from the vehicle to hard reset the vehicle. He described that he performed the parasitic drain test again and the vehicle drew a normal number of amps.

Mr. Sangster opined that the vehicle was not defective and the system was doing what it was supposed to do. He claimed that none of the issues substantially impaired the value of the vehicle. He added that the four battery replacements were charged to the Respondent and not the dealer.

On cross-examination, Mr. Sangster pointed out that older cars did not have the system affected by the third-party scanner. He explained that it was possible to never notice the larger drain by operating the car daily. He acknowledged that replacing four batteries in two years was not normal.

### **E. Analysis**

As explained in the discussion of applicable law, the law imposes the burden of proof on the Complainant. Accordingly, the Complainant must affirmatively prove every Lemon Law element by a preponderance of the evidence. In this case, a preponderance of the evidence does not show that the subject vehicle has a currently existing defect covered under warranty.

The record shows that the vehicle has had repeated electrical problems. However, Lemon Law relief does not apply to all problems that may occur with a vehicle. Instead, the Lemon Law only provides relief for defects covered under warranty (warrantable defects) that continue to exist after repairs.<sup>29</sup> The Lemon Law does not require any particular warranty coverage or any specific standards for vehicle characteristics. Rather, the Lemon Law requires a respondent to conform its vehicles to whatever coverage the warranty provides. In part, the subject vehicle's warranty states that: "Jaguar Land Rover North America, LLC, warrants that during the warranty period, if a Land Rover vehicle is properly operated and maintained, repairs required to correct defects in factory-supplied materials or factory workmanship will be performed without charge upon presentment

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<sup>29</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

for service at an authorized Land Rover Retailer ”<sup>30</sup> According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).<sup>31</sup>

A defectively manufactured vehicle has a flaw so that it does not conform to the manufacturer’s specifications, and is not identical to other same model vehicles.<sup>32</sup> A manufacturing defect occurs when the vehicle varies from the manufacturer’s design standards, causing that vehicle to differ from other vehicles of the same kind.<sup>33</sup> In other words, a manufacturing defect is an isolated aberration, an unintended configuration occurring only in those vehicles not produced according to the manufacturer’s specifications.<sup>34</sup> Stated another way, a defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. In contrast, design issues result from the manufacturer’s design of the vehicle, even though manufactured without any flaws.<sup>35</sup> Design characteristics, including design defects, exist in the vehicle’s specifications, and do not arise from any error

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<sup>30</sup> Complainant’s Ex. 5, Passport to Service, Warranty Statement.

<sup>31</sup> Courts have affirmed that warranty language covering “defects in material or workmanship” do not cover design issues. *E.g.*, *Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 (“The manufacturer’s express warranty in the case sub judice provides: ‘Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship . . . .’ The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty.”); *see GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) (“the language in the contract of May 12, 1980, expressly limited TCR’s recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.”).

<sup>32</sup> *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.—Texarkana 1985), *aff’d* in part on other grounds, *rev’d* in part on other grounds, 715 S.W.2d 629 (Tex. 1986) (“Manufacturing defect cases involve products which are flawed, i.e., which do not conform to the manufacturer’s own specifications, and are not identical to their mass-produced siblings.”).

<sup>33</sup> *Ridgway v. Ford Motor Co.*, 82 S.W.3d 26, 31-32 (Tex. App.—San Antonio 2002), *rev’d on other grounds*, 135 S.W.3d 598 (Tex. 2004) (“A manufacturing defect may be distinguished from a design defect. A manufacturing defect occurs when the product varies from the manufacturer-established design standards, causing that product to deviate from the normal safety of other products of its kind.”).

<sup>34</sup> *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989) (“This distinction between ‘aberrational’ defects and defects occurring throughout an entire line of products is frequently used in tort law to separate defects of manufacture from those of design. . . . Stated another way, the distinction is between an unintended configuration [a manufacturing defect], and an intended configuration that may produce unintended and unwanted results [a design defect].”).

<sup>35</sup> *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.—Texarkana 1985), *aff’d* in part on other grounds, *rev’d* in part on other grounds, 715 S.W.2d 629 (Tex. 1986) (“Defective design cases, however, are not based on consumer expectancy, but on the manufacturer’s design of a product . . . even though not flawed in its manufacture.”).

during manufacturing.<sup>36</sup> Accordingly, a design characteristic exists in all vehicles of the same design, but the vehicle's intended configuration may produce unintended and unwanted results.<sup>37</sup> Because the warranty only covers manufacturing defects, the Lemon Law does not provide relief for design characteristics, design defects, or any other non-manufacturing problem. Even though an issue may be unintended and unwanted, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect.

In the present case, the complaint alleged that electrical and software issues would cause the battery to drain and the vehicle would occasionally completely die. Additionally, the climate control would not work and the sunroof would not open. As described below, the complained of battery drain is not a warrantable defect. Further, the climate control and sunroof issues appear to have been successfully repaired.

### **1. Battery Drain/Vehicle Completely Dead**

The evidence shows that the battery drain, which also caused the vehicle to die, results from a design issue and not a warrantable manufacturing defect. By design, when a non-Jaguar Land Rover scanner interacts with the vehicle, the vehicle's gateway module, which acts as a guard, activates and stays on. However, the activation of the gateway module has the side effect of drawing more current. This increased current draw led to the complained of battery drain and the vehicle going completely dead. Though the alternator may ordinarily maintain the battery's charge, the record indicates that the limited use of the subject vehicle (about 10 to 15 miles every 10 days) did not allow the alternator to run long enough to charge the battery faster than it drained. In sum, the battery drain in this case is not a warrantable defect.

### **2. Climate Control (AC/Heat) and Sunroof**

The evidence reflects that the climate control and sunroof issues did not reoccur after the April 6, 2021, repair visit that replaced connectors to address a loose pin. The repair appears to

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<sup>36</sup> In contrast to manufacturing defects, “[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves.” *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

<sup>37</sup> *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989) (“This distinction between ‘aberrational’ defects and defects occurring throughout an entire line of products is frequently used in tort law to separate defects of manufacture from those of design. . . . Stated another way, the distinction is between an unintended configuration [a manufacturing defect], and an intended configuration that may produce unintended and unwanted results [a design defect].”).

have cured the root cause of the sunroof and climate control issues, which related to each other (the operation of the climate control relied in part on inputs from the sunroof). Additionally, the Complainant affirmed that the sunroof and climate control issues were resolved. Because the climate control and sunroof issues do not continue to exist, they cannot support any relief.

### III. Findings of Fact

1. On June 14, 2019, the Complainant, leased a new 2019 Land Rover Range Rover Velar from Autobahn Imports, a franchised dealer of the Respondent, in Fort Worth, Texas. The vehicle had 4,641 miles on the odometer at the time of lease.
2. USB Leasing LT (Intervenor) is the current lessor.
3. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.
4. The Complainant took the vehicle to a dealer for repair of the complained of issues as shown below:

Date	Miles	Issue
12/24/2019	6,711	Battery was dead.
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04/06/2021	13,566	The temperature controls will not work intermittently. Sunroof controls will not work. No AC.
06/15/2021	14,873	Battery too low. Vehicle is completely dead.

5. On or about April 6, 2021, the Complainant provided a written notice of defect to the Respondent.
6. On April 6, 2021, the Complainant filed a complaint with the Department alleging that electrical and software issues would cause the battery to die. Additionally, the climate control would not work, the sunroof would not open, and the vehicle would occasionally completely die.
7. On July 8, 2021, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them not less than 10 days' notice of hearing and their

rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the factual matters asserted.

8. The hearing in this case convened on November 10, 2021, in Plano, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented herself. The Complainant's husband, Daniel Michaelis also testified for the Complainant. John Chambless, attorney, represented the Respondent. Brandon Sangster, Customer Satisfaction Senior Technical Specialist, testified for the Respondent. USB Leasing LT (Intervenor) did not participate in the hearing.
9. The vehicle's odometer displayed 16,632 miles at the time of the hearing.
10. The vehicle's warranty was in effect at the time of the hearing.
11. The AC worked as designed during the inspection. The sunroof opened and closed properly with no issues observed. The vehicle otherwise appeared to operate normally.
12. The battery drain, which also caused the vehicle to die, resulted from the vehicle's design issue and not from a manufacturing defect. By design, when a non-Jaguar Land Rover scanner interacts with the vehicle, the vehicle's gateway module, which acts as a guard, activates and stays on. However, the activation of the gateway module has the side effect of drawing more current. This increased current draw led to the battery drain and the vehicle going completely dead. Though the alternator may ordinarily maintain the battery's charge, the limited use of the subject vehicle (about 10 to 15 miles every 10 days) did not allow the alternator to run long enough to charge the battery faster than it drained.
13. The April 6, 2021, repair cured the sunroof and climate control issues. The climate control and sunroof issues did not reoccur after the April 6, 2021, repair that replaced connectors to address a loose pin.

#### IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.
3. The Complainant filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052. 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
8. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

**V. Order**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

**SIGNED December 16, 2021**



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**ANDREW KANG**  
**HEARINGS EXAMINER**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**